

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NO. 04 CV 11522 (WGY)

STEVEN R. KINCAID,)
Plaintiff,)
vs.)
BANK OF AMERICA CORPORATION,)
Defendant.)

)

**DEFENDANT'S MOTION TO ENLARGE
TIME FOR DEFENDANT TO PRODUCE EXPERT REPORTS**

Defendant Bank of America Corporation (“Defendant”), hereby moves to modify this Court’s scheduling order dated September 28, 2005, with respect to the date for submission of Defendant’s expert reports and to extend the time for Defendant to make its expert disclosures from November 21, 2005, to December 9, 2005.

As grounds for this motion, Defendant states as follows:

1. Pursuant to the Court’s scheduling order of September 28, 2005, Plaintiff was to make expert disclosures pursuant to Rule 26(a)(2) by November 4, 2005, and Defendant by November 21, 2005.
2. Plaintiff made one expert disclosure on November 4, 2005 and another on November 14, 2005.
3. On November 15, 2005, the parties attended a mediation before a private mediator. This matter was not resolved through mediation.

4. Defendant requires additional time, through December 9, 2005 to make its expert disclosures pursuant to Rule 26(a)(2).
5. Defendant anticipates that its expert opinions shall be offered to rebut evidence on the same subject matter identified by Plaintiff. Therefore, Defendant should have at least 30 days following Plaintiff's disclosures to provide its disclosure, pursuant to Rule 26(a)(2)(C).
6. This is the first request for an extension of the Scheduling Order by Defendant. Plaintiff has requested and received two extensions of the Court's Scheduling Order in this case for deadlines other than the pre-trial conference and trial date. In addition, Plaintiff recently requested and received an extension of time to submit his opposition to Defendant's Motion for Summary Judgment.
7. This short extension will not prejudice Plaintiff as, based on information from the court clerk, this case is not expected to be reached for trial prior to December 9, 2005, and the matter is scheduled for a hearing on Defendant's Motion for Summary Judgment on December 14, 2005.

CONCLUSION

For the foregoing reasons, Defendant requests that this Motion For An Extension Of Time To Produce Expert Reports be allowed and the deadline for Defendant's expert disclosures be enlarged to December 9, 2005.

BANK OF AMERICA CORPORATION,
Defendant
By its attorneys

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DATE: November 18, 2005

Rule 7.1 Certification

I hereby certify that pursuant to Rule 7.1, on November 18, 2005, I attempted to confer with Plaintiff's counsel, David Fine, Esq., by telephone in order to narrow any areas of disagreement related to this motion. I was not successful in reaching Mr. Fine by telephone on that date. In addition, I emailed the proposed motion to Mr. Fine with a request to confer. I received no response to this email request.

/s/ Siobhan M. Sweeney